

## REMARKS

Claims 1-88 are in the application.

Claims 1, 23, 71, and 79 have been amended to correct technical errors.

Claims 83-88 are new dependent claims.

Claims 1-82 are rejected under 35 U.S.C. 102 and/or 103 on various grounds.

Prior to a focus on the rejections, applicants believe it would be helpful to review the applicable law relating to the on-sale bar.

## THE ON SALE BAR

35 U.S.C. § 102(b) provides that an invention is not patentable if the "invention was . . . on sale in this country, more than one year prior to the date of the application for patent in the United States." 35 U.S.C. §102(b). Prior to 1998, courts had used a "totality of the circumstances" analysis to determine whether an invention was on sale for purposes of the on-sale bar. In 1998, the "totality of the circumstances" analysis was overruled by the Supreme Court in *Pfaff v. Wells Electronics, Inc.* *Pfaff v. Wells Elec., Inc.*, 525 U.S. 55, 63 (1998). The holding in this case replaced the "totality of the circumstances" analysis with the current two-pronged test to determine the applicability of the on-sale bar. *Pfaff*, 525 U.S. at 55: "the on-sale bar applies when two conditions are satisfied before the critical date. First, the product must be the subject of a

commercial offer for sale . . . . Second, the invention must be ready for patenting." *Pfaff*, 525 U.S. at 67. Thus, prior case law on this subject is expressly overruled and inapplicable. The Federal Circuit in *Minnesota Mining & Manufacturing Co. v. Chemque, Inc.* 303 F.3d 1294, 1298 (Fed. Cir. 2002). further elucidated the applicable law.

*Pfaff* also clarified that an invention will be deemed ready for patenting by proof of reduction to practice before the critical date or alternatively by proof that prior to the critical date the inventor had prepared drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention. *Pfaff*. at 67-68.

#### THE COMMERCIAL OFFER FOR SALE

The first case after *Pfaff* to discuss what constitutes a commercial offer for sale was *Group One, Ltd. v. Hallmark Cards, Inc.* 254 F.3d 1041 (Fed. Cir. 2001). In *Group One*, the Federal Circuit explained that:

As a general proposition, we will look to the Uniform Commercial Code ("UCC") to define whether, as in this case, a communication or series of communications rises to the level of a commercial offer for sale. As this court has previously pointed out, "[t]he UCC has been recognized as the general law governing the sale of goods and is another useful, though not authoritative, source in determining the ordinary commercial meaning of" terms used by the parties. . . . The Supreme Court's formulation of a "commercial offer for sale" in *Pfaff* also supports consulting the UCC. The Supreme Court has also cited the Restatement of Contracts with approval in the commercial contract law context. *Id.* At 1047 (citations omitted).

Therefore, a commercial offer for sale must mean an offer that "rise[s] to the level of a formal 'offer' under contract law principles." *Id.* at 1046-47 (quoting *RCA Corp. v. Data General Corp.*, 887 F.2d 1056, 1062 (Fed. Cir. 1989)). In *Lacks Industries, Inc. v. McKechnie Vehicle Components USA, Inc.*, 322 F.3d 1335 (Fed. Cir. 2003), the Federal Circuit reiterated that the UCC should determine whether a communication is sufficiently definite as to constitute an offer for sale.

The Federal Circuit in *Linear Tech. Corp. v. Micrel, Inc.*, 275 F.3d 1040 (Fed. Cir. 2001) held that promotional activity not rising to the level of a contractual offer for sale cannot trigger the on-sale bar after *Group One*. The *Linear Tech* court explained:

The UCC does not define "offer," so we will look to common law to guide our inquiry.

"An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Restatement (Second) of Contracts § 24 (1981); accord Richard A. Lord, *Williston on Contracts* § 4:13, at 367 (4th ed. 1990) (explaining that "in order for an offer to exist, it must constitute a manifestation communicated to the offeree so as to justify his understanding that by assenting a bargain will be concluded").

*Id.* at 1050.

It would appear that even extensive advertising would not qualify as a commercial offer for sale.

"[I]n *Linear Technology Corp. v. Micrel, Inc.*, this court explained that promotional activity not rising to the level of a contractual offer for sale cannot trigger the on-sale bar after *Group One*."

*Minnesota Mining & Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1307 (Fed. Cir. 2002).

Because advertising generally does not manifest to the offeree that the offeree's assent will

conclude the bargain, it is insufficient to satisfy the first prong of the on-sale bar. *See id.* at 1308 (referencing the Restatement (Second) of Contracts § 24 (1981)).

Section 102(b) of the Patent Act refers to an "*invention . . . on sale in this country . . . .*" 35 U.S.C. §102 (emphasis added). It appears that an actual embodiment of the patented invention must be on sale before the on-sale bar is triggered. 2 Donald S. Chisum, *Chisum on Patents: A Treatise on the law of Patentability, Validity, and Infringement* §6.02[6] (2002). Thus, an offer to sell or license patent rights would not be considered a commercial offer, especially if additional development work is necessary before the embodiment can be used or sold. *Id.*

The Federal Circuit in *3M* indicated that "[t]he evidence in the record . . . only indicates that Ricon had sent samples of Ricoseal to various companies." *Minnesota Mining & Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1308 (Fed. Cir. 2002). The court held that "[p]roviding potential customers with samples of a product, without providing any other terms, is not a commercial offer for sale, because the recipient could not act in such a way that would create a contract." *Id.* Without "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it," there can be no offer. Restatement (Second) of Contracts, § 24 (1981). The court then concludes that "the fact that Ricon sent samples of Ricoseal to various companies, without more, does not trigger the on-sale bar." *Minnesota Mining & Mfg. Co.*, 303 F.3d at 1308.

It is clear that the determination of whether an offer rises to the level of a commercial offer for sale will be made under UCC and contract principles. In particular, promotional activities are not commercial offers for sale. This is true even for large and extensive advertising campaigns which arguably allow an inventor to reap benefits before a patent is filed. Promotional activities include

sending samples to customers. In addition, case law has indicated that the sale or licensing of patent rights is not a commercial offer for sale.

## READY FOR PATENTING

The Pfaff Court stated that one can prove that an invention is "ready for patenting" in at least two ways: by proof of reduction to practice before the critical date; *or* by proof that prior to the critical date the inventor had prepared drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention. 525 U.S. at 67 (emphasis added).

The Court based its holding that an invention does not need to be reduced to practice for the "on-sale" bar to apply on two key arguments. First, it pointed out that the "primary meaning of the word 'invention' in the Patent Act unquestionably refers to the inventor's conception rather than to a physical embodiment of that idea." *Id.* At 60. It further noted that "[i]t is well settled that an invention may be patented before it is reduced to practice" (i.e., if it was constructively reduced to practice via the filing of the patent application). *Id.* at 61 (relying on *The Telephone Cases*, 126 U.S. 1, 535-36 (1888) (upholding Alexander Graham Bell's patent despite the fact that he filed his application before building a working phone)). Prior to the critical date, the inventor, Wayne K. Pfaff, had sent to a manufacturer detailed engineering drawings of his invention that had "sufficient clearness and precision to enable those skilled in the matter" *Telephone Cases*, 126 U.S. at 536 to produce the device, and later showed a sketch of his invention to representatives of Texas Instruments, which placed an order; *Pfaff*, 525 U.S. at 55 (1998), the court held that as a result of these activities, Pfaff could have obtained a patent on his invention at the time he accepted the purchase order. *Id.* At 63. Therefore, both conditions of the on-sale

bar were satisfied: (1) acceptance of the purchase order was made prior to the critical date establishing a commercial offer for sale; and (2) the drawings that Pfaff sent before the critical date fully disclosed the invention establishing that the invention was "ready for patenting," and the patent was held invalid. *Id* at 69.

The court in *STX, L.L.C. v. Brine, Inc.* 211 F.3d 588, 54 U.S.P.Q.2d 1347 (Fed. Cir. 2000), concluded that a commercial embodiment of a patent that is the subject of an offer to sell does not need to possess characteristics that are described in the patent - but that are not claimed limitations - in order to trigger the on-sale bar.<sup>30</sup> Of course, if the claims distinguish the prior art, defined by a publication, public use, or public sale, the analysis is moot, since the "invention" itself has not been offered for sale.

In both *Scaltech, Inc. v. Retec/Tetra, L.L.C.*, 269 F.3d 1321 (Fed. Cir. 2001) and *Space Systems/Loral v. Lockheed Martin Corporation*, 271 F.3d 1076 (Fed. Cir. 2001), the Federal Circuit held that a customer brochure might be sufficient to establish that an invention is "ready for patenting." However, the outcomes of these two cases differed, in dependence on whether the brochure was enabling for the practice of the invention. That is, in the case where a document does not meet otherwise the criteria for a printed publication under 35 USC 102(b), it may nevertheless be effectively deemed prior art if the document existed in conjunction with an otherwise unspecified offer for sale. The document thus becomes evidence of the readiness for patenting.

In *Scaltech*, the court held that a proposal sent by Scaltech to CITGO, in an attempt to persuade CITGO to accept Scaltech's offer to treat its hazardous waste, was proof that the invention was "ready for patenting." 269 F.3d at 1331. The court reached this conclusion based on the fact that

"the inventor had prepared drawings or a description sufficient for enablement" and that the document was "essentially a 'recipe' that . . . allows CITGO to practice an embodiment of the invention." *Id.* Thus, because CITGO was sufficiently enabled to use the invention, Scaltech's invention was considered "ready for patenting."

By contrast, in *Space Systems*, the Federal Circuit held that a customer proposal was insufficient to establish that the invention was "ready for patenting." 271 F.3d at 1081. In this case, a proposal sent to a customer described the basic idea of the invention and how the inventor proposed to achieve it. *Id.* at 1078. The proposal also included rough drawings, and an estimate of the cost of development. *Id.* The court held that

[t]o be 'ready for patenting' the inventor must be able to prepare a patent application, that is, to provide an enabling disclosure as required by 35 U.S.C. §112. . . . For a complex concept . . . wherein the inventor himself is uncertain whether it could be made to work, *a bare conception that has not been enabled is not a completed invention ready for patenting.* Although conception can occur before the inventor has verified that his idea will work . . . *when development and verification are needed in order to prepare a patent application that complies with §112, the invention is not yet ready for patenting.* *Id.* at 1080(emphasis added) . . . [T]he fact that a concept is eventually shown to be workable does not retrospectively convert the concept into one that was 'ready for patenting' at the time of conception." *Id.*

In *Robotic Vision Systems, Inc. v. View Engineering, Inc.*, 249 F.3d 1307 (Fed. Cir. 2001), a co-inventor explained the later patented invention to a software programmer prior to the critical date and asked him to write the necessary software. *Id.* at 1311. This explanation was sufficiently

specific for the programmer to understand the invention and to write the software needed to implement the method. *Id.* The Federal Circuit held that it was irrelevant that the software was not reduced to practice prior to the critical date, since it was ultimately completed based on the description that was orally given. *Id.* The court held that because the description was sufficiently specific to enable the programmer, a person of skill in the art, to practice the invention, the invention was complete, and therefore "ready for patenting," at the time the oral explanation was given. *Id.* The Court further held that when there is an offer to sell an invention that, at the time of contracting, is in a developmental stage, and the invention is later completed prior to the critical date, pursuant to the offer, this "would validate what had been theretofore an inchoate, but not yet established, bar." *Id.* at 1313 (citing *Robotic Vision Sys., Inc. v. View Eng'g, Inc.*, 112 F.3d 1163 (Fed. Cir. 1997)).

In addition to establishing certain factors that tend to prove that an invention is "ready for patenting" at the time of a commercial offer for sale, the Federal Circuit has outlined certain key factors that tend to disprove such a finding. The crux of the arguments made by the court relies on the invention not being "enabled" or undergoing material changes affecting claim limitations following the critical date. The two main factors held to disprove that an invention is "ready for patenting" are: (1) that the invention is not enabled, or that it requires undue experimentation to practice the invention, and (2) that changes to claimed limitations were made to the invention after the critical date.

In *EZ Dock, Inc. v. Schafer Systems, Inc.*, 276 F.3d 1347 (Fed. Cir. 2002), the Federal Circuit held that, with respect to claimed features of an invention,



when an inventor can show changes during experimentation that result in features later claimed in the patent application, this evidence is a strong indication that the activities of the inventor negated any evidence of premature commercial exploitation of an invention ready for patenting. Id at 1353.

## THE REJECTIONS

The Examiner has asserted that the invention was publicly used more than one year prior to the patenting thereof by applicant. The evidence proffered by the Examiner is a series of articles and press releases relating to applicants' own work.

A review of these documents and publications reveals that none, alone or in combination, teach or suggest the entirety of the claimed invention.

Each of the independent claims includes at least one element which was not actually implemented in any publicly used embodiment, was not part of any embodiment known by applicant to exist (by applicant or others), and was not described in a manner sufficient to allow a person or ordinary skill in the art to make or use the invention.

The evidence must therefore be carefully analyzed, since each includes carefully calculated language which speaks of future developments or ambiguous state of affairs. These documents are marketing materials, intended to promote investment in Clickshare, or to promote alliances with publishers which would allow Clickshare to gain sufficient backing to complete

development of the invention. The missing element was the transaction accounting and payment infrastructure, critical to any commercial deployment, but not critical for potential clients to investigate compatibility of the Clickshare system, with their Internet web sites. Thus, the intended meaning of alpha and beta testing was that portions of the system which could only be tested through public use of the system under real-world conditions could be fairly exercised prior to requiring any publisher to commit to a commercial relationship with Clickshare Service Corp.

For example, in claim 1, at least the settling means was absent from the public tests and no enabling description existed in any document. In claim 18, at least the settling step was absent. In claim 35, at least the updating a settling database step is absent. In claim 49, at least the generation of the billing event is absent. In claim 63, at least the accounting for use of the online services is absent. In claim 69, at least the generating a billing event is absent. In claim 71, at least the billing system and associated software interaction is absent. In claim 75, at least the account-specific billing information is absent. In claim 79, at least the customer charges are absent. In claims 81 and 82, at least the posting of a transaction to a particular user account is absent.

Thus, each of the independent claims includes at least one element which represents the charging a user account, or the charged user account, which was absent from any use of precursors of the invention prior to the critical date.

As presented in the Declaration of William Densmore, provided herewith, there existed no operational embodiment of the invention as claimed, or any enabling description of the invention as claimed, as of the critical date, and development activities were continuous and ongoing.

Further, A careful review of the documents does not indicate that the transaction elements of the invention were in any way included in any public use. No sales ever took place prior to the critical date.

It is therefore respectfully submitted that the rejections should be withdrawn.

Applicants will now address each issue or fact cited by the Examiner, in the order presented.

Page 5, second paragraph: The examiner seeks to apply an external definition of a “beta test” to interpret the nature of what is being tested. In fact, the nomenclature applied by applicants or others to the test is irrelevant to the analysis. The issues, under 35 U.S.C. § 102(b), are whether the invention itself was actually in public use, and whether, even if not in public use, it was offered for sale. Since each independent claim requires an accounting, settlement or payment, and no such events took place or elements were publicly used, there can be no finding of a public use.

As a corollary, if the examiner interprets that beta test itself as a “sale”, this was not a sale of the invention to be patented. If the examiner interprets this as an “offer for sale” of a future embodiment, then it is the examiner’s burden to show that the terms of the supposed offering were such that a recipient could enter into a binding agreement by mere assent.

Applicants, on the other hand, contend that there was no offer for sale, of either the subject of the test, or the later implementation which included transactional capabilities, because the predicates for an offer under the UCC were not completed. While some of the releases announce potential prospective costs of the product and/or service, they did not bind either party. Thus, for example, no third party could rely on any publication or communication to define either the cost, or the product or service to be delivered in the future. Clickshare was free to change its costs structures, or indeed to offer no product or service, without liability or recourse. Thus, the information and course of conduct do not rise to the level of an offer for sale or sale under the UCC, or indeed any known scheme of contract law, and therefore no on sale bar exists.

Page 5, third paragraph, Exhibit A: This document, as cited by the Examiner, indicates that the beta test did NOT include transactional capability. The document further does not provide an enabling disclosure of transactional capabilities, and does not suggest that the invention including transactional capabilities was ready for patenting. It does, in fact indicate that applicants believed that either the basic system was not ready, or the transactional system was not ready, or both. In fact, as detailed further in the accompanying Declaration of William Densmore, applicants did not possess a working embodiment of the transactional system, and since the software engineer was a named inventor, this also means that the inventive entity could not communicate an enabling disclosure of the invention. This is in contrast to, and distinguished from, the holding of *Robotic Vision Systems, Inc. v. View Engineering, Inc.*, 249 F.3d 1307 (Fed. Cir. 2001), in which the programmer was not a named inventor, and the instructions from the inventor to the programmer demonstrated that the invention was ready for

patenting because the inventor was able to convey an enabling disclosure of the invention to the programmer prior to the critical date.

Page 5, fourth paragraph, exhibit F: The quoted section speaks in the future tense, and thus admits that the product does not exist. While it is clear and admitted that Clickshare sought to implement a commercial system, it is also clear that exhibit F does not represent an enabling disclosure of the system as claimed, an offer for sale, or evidence that the invention was ready for patenting.

Page 6, first paragraph, exhibit H: This document apparently speaks in the present tense, but is quite non-specific as to what is being referred to, and in particular, the Examiner imputes a different meaning to the word “developed” than was intended. Clearly, this document does not represent an offer for sale, or evidence of a sale. It is not, by any means, an enabling disclosure of the invention. Finally, it is insufficient to evidence that the invention was ready for patenting. Applicants, and in particular Mr. Densmore, have affirmed that as of December 7, 1995, the apparent date of this document, the settlement system was not in fact operational, but that other aspects of the system were in beta test. Thus, this document does not serve as a bar to patentability.

Page 6, second paragraph, exhibit J: This document speaks in the present tense; however, in the context of other documents and disclosures, it is clear that at least the transaction processing capabilities did not exist, and was “vaporware”. The document therefore sets forth what was intended to exist, but what was still in development, since a complete and accurate public

disclosure of the status would have been competitively disadvantageous, and require continuous update. That is, the text of this page predicted where the product would be. Note that the patented system employs three components: the user web browser, which is generally unmodified for use with the system, a publisher web site component, and the Clickshare server component, which actually handles the accounting and transactions. This later component is required for transactions, and was neither offered for sale nor publicly used. The "Clickshare-enhanced HTTP server" was indeed made available to "qualified users", without cost, but was not itself capable of handling accounting transactions.

This document also does not provide an enabling or complete disclosure of the invention, and thus is not itself a 35 U.S.C. § 102(b) prior art reference for any of the independent claims.

Page 6, third paragraph et seq., exhibit L: The quoted question and answer clearly rebut the examiner's interpretation that the invention was ready for patenting. The Answer states that the Clickshare(sm) 'charge-per-click' server software was NOT available at that time. Thus, what was allegedly being charged for was "enrollment" with respect to a system incapable of handling charge-per-page services.

The examiner interprets the document literally, that in fact a \$100 fees was charged. In fact, none was charged, but in any case, the beta test did not include essential elements of the claimed invention, and therefore does not represent an "on sale" bar. In contrast to the examiner's assertion that the only purpose of the beta test was to solicit feedback with respect to "ancillary details", a substantial portion of the Clickshare system remaining to be developed was the

transaction accounting system, which is in no way ancillary. The examiner's analysis is thus conclusory and incorrect. The examiner then bootstraps the analysis, starting from a document which expressly states that the "charge-per-click" components were unavailable, calling this an "ancillary detail", and ultimately that the system was "ready for patenting". The standard set forth in *Pfaff v. Wells* by the Supreme Court, and interpreted by the Federal Circuit Court of Appeals, requires more than simply conclusory allegations to support unpatentability. The burden remains with the examiner to show that the invention was the subject of a commercial offer for sale, and that it was ready for patenting, a burden which applicants respectfully submit is not met herein.

Since the accounting functions were unavailable in the beta test (or thereafter prior to the critical date), there is no public use of the invention as claimed, and consideration of experimental use exception moot.

Page 8, first paragraph: The analysis here appears to address an experimental use argument, and to that extent, it is addressed above. Indeed, the examiner appears correct that applicants sought to generate commercial interest in their system before it was complete, both to gain benefit of user-insight into final product and/or service implementation, and to assure success of the business model. As noted by the Examiner, there were "broadcasts" of intended future functionality.

There were not, however, detailed disclosures of the methods or apparatus for implementing the conceived invention, and indeed a review of the body of evidence clearly indicates that the

completer invention was not reduced to practice, and to the extent that an understanding of how to implement the accounting system was required to convey an enabling disclosure, and thus the statements of future conduct point to a lack of present readiness for patenting.

Pages 9-10, Exhibit O: This document clearly states: "Transaction-handling capabilities, and an initial base of Publishing members, will be launched in early 1996." Thus, transaction-handling capabilities were not to be offered prior to that date, according to this document. While a projected cost of \$795 to "join" was communicated, this did not represent an offer which could be accepted, and indeed quite essential terms of the agreement were not defined, rendering this not even a future offer. For example, exactly what it means to "join" is unspecified, for example the term, additional monetary obligations, rights, and the like.

Further, the release is a quite incomplete disclosure of the system to be deployed. While there are a series of functional statements presenting the goals or business model of the system, there is insufficient information to enable a person of ordinary skill in the art to implement the invention without the exercise of inventive skill.

Pages 11-18, Exhibit L: This document, in view of the context that the transactional system was not to be made available prior to the critical date, nor intended to be made available, discusses the contemplated functions of the Clickshare system, after initial non-commercial testing would be completed, and a commercially useful system released. Note that many of the Answers are worded in the future tense, and thus do not speak of the beta release system in terms of functionality or implementation. It is particularly telling that the answer to the question "Who is



among Newshare's Publishing Members" begins: "We have not begun to formally enroll or announce our Publishing members." Thus, in spite of projected costs and projected functionality, it is clearly enunciated that the system was not being deployed, and was thus not subject to a public use, and based on a disclaimer of formal enrollment (and associated fees) does not rise to the level of an offer for sale.

This document also does not demonstrate that the system was ready for patenting. For example, while substantial language is present which discusses the intended system functioning, it is absent discussion of how the system will be implemented to achieve its numerous goals, and even whether all of the stated goals will remain applicable.

Claims 1-8, 11-25, 28-34, 63-64, 66-72 and 74-82 are rejected as being anticipated by Exhibit O.

Element (c) of claim 1 provides a "settling means, separate from a respective home provider... accessing a respective home provider registration database, and communicating with an accounting database maintained separately from a respective registration database".

Element (c) of claim 18 provides the step of "settling accounts among service providers by charging the home provider for access by its clients to the resources of the other providers, by accessing a respective home provider registration database, and communicating with an accounting database maintained separately from a respective registration database".

Nowhere does Exhibit O teach or suggest these elements, in their entirety. Thus, claims 1-34 are believed distinguished.

Claim 63 includes “an online broker site connected to the plurality of SP sites, the online broker site running at least one brokering application to provide an online brokering service to account for the use of online services by respective users ...”

Claim 69 includes the steps of “providing an online broker site that provides an online brokering service, the online broker site having a brokering database which contains account information on the user and on other users of the online brokering service, the online broker site located remotely from the SP site and the registration site ... generating a billing event at the SP site and sending the billing event to the online broker site”.

Claim 72 provides “a billing system at the online broker site for recording monetary charges to accounts of registered users, the monetary charges corresponding to online services purchased from the SP sites over the public network”.

Claim 75 provides “an online brokering service running on at least one site of a computer network, the online brokering service storing billing information for a plurality of users of the public network, the online brokering service providing online access by the users to account-specific billing information”.

Exhibit O discloses that the “Clickshare-enhanced web server software logs user registration, authentication, personalization and micro-transactions.” The “Clickshare token validation service (TVS) validates authentication tokens, brokers non-personal user preferences among publishers, and maintains ‘page visit’ records from multiple independent sites sortable by anonymous user number, page visited and site ID.” Nowhere does Exhibit O disclose an online broker site which accounts for use of online services by respective users, contains account information representing billing information, that the online broker site includes a billing system, as defined in claims 63, 69, 72 and 75. Claims 63-78 are therefore believed to be distinguished.

Claim 79 provides that “the broker server receives anonymous accounting information from the online site for charges of a customer and receives identifying information from the registration server to permit updating of account information for a respective registered customer.” These features are not taught or suggested in Exhibit O. Therefore, claims 79-80 are believed distinguished.

Claim 81 provides “a settlement server, receiving said requests, accessing at least one of said user registration databases, and communicating said request and an user identity to one of a plurality of user account databases”. Claim 82 provides the step of “independently maintaining the user registration databases and the user account databases at remote locations.”

Claims 9, 10, 26 and 27 are rejected as being obvious over Exhibit O in view of Exhibit L. Exhibit O is distinguished as above. Applicants specifically note that the use of UDP is not simply a convenient substitution for other protocols. UDP does not provide guaranteed delivery,

and packets may arrive out of order. It is respectfully submitted that the use of UDP, as claimed in claims 10 and 27, in a transactional system, is not clearly obvious, and is not taught or suggested by the references.

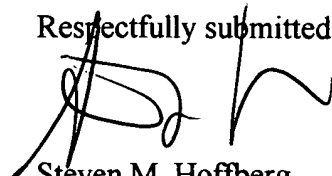
Claims 35-62 are rejected under 35 U.S.C. § 103 as being obvious over Exhibit O in view of Teper. Claims 65 and 73 are rejected under 35 U.S.C. § 103 as being obvious over Exhibit O and Teper further in view of Exhibit L. Exhibit O and L are distinguished as above. In addition, applicants have previously submitted the Second Declaration of William P. Densmore, which presents evidence antedating Teper.

#### CONCLUSION


It is therefore respectfully submitted that the invention, as claimed, was not offered for sale or sold more than one year prior to the priority date, that in no instance was the invention, as claimed, publicly used than one year prior to the priority date, and the prior art does not fairly teach or suggest the presently claimed invention.

It is respectfully submitted that the claims are therefore allowable.

Respectfully submitted,

  
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